

ROYAL AND JEAN CLAUSING

IBLA 77-10 Decided November 19, 1976

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 13817-E.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the due date may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Sending a payment over a long distance 2 days before the due date does not constitute reasonable diligence.

APPEARANCES: Royal Clausing and Jean Clausing, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

This appeal is by Royal Clausing and Jean Clausing, his wife, from the decision of September 9, 1976, by the Wyoming State Office, Bureau of Land Management, denying their petition for reinstatement of oil and gas lease W 13817-E. The lease had terminated by operation of law due to appellants' failure to pay the annual rental on time. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). The payment was due on or before August 2, 1976, but was not received until August 5, 1976. Appellants' check is dated July 30, 1976, and the envelope in which it was received is postmarked August 2, 1976.

Because August 1, 1976, was a Sunday, and the Bureau of Land Management offices were closed on that day, and the payment had to be received no later than the close of business on August 2, 1976, a

Monday. 43 CFR 3108.2-1(a). Appellants state that the rental check was executed on July 30, 1976, and placed in an envelope directed to the Wyoming State Office on the early morning of July 31, 1976, prior to the time the mail was scheduled to be picked up the following day, Sunday, August 1, 1976, that the mailman had either completed his route earlier than scheduled or had bypassed the box containing the letter so that the letter was not posted as expected on Saturday, July 31, 1976, and, consequently, they were unable to have it posted until Monday, August 2, 1976.

[1] Leases terminated by operation of law for failure to pay the annual rental on time may be reinstated if, among other things, the late payment is either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c); 43 CFR 3108.2-1(c).

Regulation 43 CFR 3108.2-1(c)(2) provides that the burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. It also defines reasonable diligence:

\*\*\* Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. [Emphasis added.]

Although the envelope containing the rental payment was postmarked at Jackson, Wisconsin, on August 2, 1976, we will assume, as appellants allege, that they placed the payment in the mailbox in the early morning of July 31 prior to the time the mail was scheduled to be picked up. However, this will avail them nothing as this was only 2 days before the due date of August 2. From Wisconsin to Wyoming is a long distance. We have held that mailing payments over long distances only 2 days before the due date does not constitute reasonable diligence as it does not take into account "normal delays" in the handling of the mail. L. J. Arrieta, 26 IBLA 188 (1976); William M. Cannon, 20 IBLA 361 (1975). In Arrieta payment was mailed 2 days before the due date from Culver City, California, to Billings, Montana. In Cannon payment was mailed from Texas to Utah 2 days before due.

Accordingly, we find that appellants were not reasonably diligent, nor can we find that the late payment was justifiable.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Martin Ritvo  
Administrative Judge

We concur.

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Douglas E. Henriques  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

